FINAL REPORT

of the

FIDUCIARY ADVISORY COMMITTEE

to the

ARIZONA JUDICIAL COUNCIL

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BACKGROUND

In the early 1990's, highly publicized cases of mismanagement and financial exploitation of incapacitated and protected persons by a prominent Maricopa County private fiduciary and his attorney brought the issue of regulation of fiduciaries to the attention of the Arizona Legislature. In 1994 the Legislature responded by approving legislation requiring the registration of private fiduciaries and directing the Arizona Supreme Court to administer this program and adopt rules for implementation. Arizona Revised Statutes § 14-5651 states the Superior Court shall not appoint a private fiduciary unless the individual is registered with the Supreme Court. A "private fiduciary" is defined by statute as an individual who is appointed by the court as a guardian or conservator for a person unrelated to the fiduciary and who charges a fee for this service; or a person appointed by the court as a personal representative, who is not related to the deceased, receives a fee, and is not nominated, or by a power conferred, in a will, nor a devisee in the will. This statutory definition thereby incorporates public, private and corporate fiduciaries and the requirements regarding certification apply to all of these entities. Statutory amendments approved by the Legislature during the 2001 legislative session and signed by the Governor exempt banks, their associated trust departments and independent trust companies from certification.

The ability to fully implement the provisions of the law was limited until 1997 when the Arizona Legislature approved a statutory funding mechanism for the program. The Supreme Court subsequently adopted rules for the implementation of the program and the Administrative Office of the Courts (AOC) developed a training program for fiduciaries. In the Fall of 1998, the first group of fiduciaries was trained and became certified in the Spring of 1999. There are currently 308 fiduciaries certified with the program.

Unfortunately some mismanagement of estates, the extent unknown, has continued. Although the majority of individuals perform their duties in a competent and ethical manner, there have been cases of public and private fiduciaries and attorneys being indicted for and convicted of financial exploitation involving estates totaling millions of dollars. Family members have also abused wards. Civil litigation and criminal prosecution, surcharge actions and bond recoveries have resulted in various sanctions and penalties, for example, civil judgment, prison terms and disbarment from the practice of law. A complaint filed with the AOC in October 1999 revealed mismanagement of estates by certified private fiduciary Nancy Elliston and resulted in the emergency suspension and subsequent revocation of Ms. Elliston's fiduciary license. This fiduciary, previously well-respected in the professional community, was indicted on charges of theft and racketeering in ten estates and plead guilty to one count of illegal use of an enterprise.

Additional complaints on other fiduciaries, both public and private, have been received by the certification program. One of these complaints involves the Gila County Public Fiduciary's Office and the former public fiduciary for that county, Rita Riell-Corbin. At the request of the Gila County attorney, the Arizona Auditor General conducted a special investigation into the alleged misconduct by Ms. Riell-Corbin in her capacity as the public fiduciary. The report of that investigation, released on May 1, 2001, states that Ms. Riell-Corbin " . . . embezzled or otherwise misused public monies totaling a minimum of $1,177,884 . . ." and that the " . . . County's and the Court's lack of oversight contributed to the enormous loss of public monies." [1] The report notes that the Court has the statutory authority to perform oversight of cases managed by the Public Fiduciary but that " . . . the Court did not ensure that annual and final accountings be reported for numerous Gila County wards." [2] The full report is contained in Appendix B.

When the Superior Court in Gila County became aware of the possibility of misconduct by Ms. Riell-Corbin, the presiding judge filed a complaint with the AOC. The AOC then commenced an investigation; this was conducted concurrently with the investigation by the Auditor General and county attorney. The results of the AOC investigation led to the revocation of Ms. Reill-Corbin's certificate on April 6, 2001. The Arizona Attorney General's Office has initiated criminal action against Ms. Riell-Corbin, resulting in indictment by a Superior Court Grand Jury on April 27, 2001 alleging theft, fraud, misuse of public money, conflict of interest and perjury. Ms. Riell-Corbin plead innocent at a hearing in the Superior Court in Gila County on May 14, 2001.

The above events highlight concerns as to whether the current available methods and resources to monitor fiduciary accountings and cases adequately protect the public. Weaknesses in the system raise the possibility of undiscovered exploitations. In March 2000, the Arizona Judicial Council, in response to a presentation by Judge Donald Daughton, then Presiding Probate Judge in the Superior Court in Maricopa County, recommended Chief Justice Zlaket appoint a committee to further examine this issue. Chief Justice Zlaket subsequently established the Fiduciary Advisory Committee, with statewide representation from the judicial and executive branches, fiduciary and legal professions and the public. The committee was directed to examine the current procedures for appropriate oversight of fiduciary accountings and case management and to recommend any needed changes to administrative procedures, rules and statutes, with identification of the budgetary impact of such recommendations. The membership of the committee is contained in Appendix A.

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[1] Arizona Auditor General: Investigative Report: Theft and Misuse of Public Monies by the Gila County Public Fiduciary. May 2001, page 1.

[2] Arizona Auditor General: Ibid, page 10.

The committee has met regularly over the past year. In conducting its work, the committee has utilized information from a variety of sources, including the June 2000 report prepared by independent contractor Itamar Sittenfeld which analyzed the fiduciary environment in Arizona and provided recommendations on how to strengthen the current system. Mr. Sittenfeld's report is enclosed in Appendix C.

The committee presented a preliminary report to the Arizona Judicial Council in October 2000. This final report builds upon the initial findings and recommendations and includes suggested amendments to statute, the administrative code governing the certification of private fiduciaries and policies and procedures of the Private Fiduciary Program.

DISCUSSION OF ISSUES AND RECOMMENDATIONS

I. FIDUCIARY CERTIFICATION PROGRAM

Arizona Revised Statutes § 14-5651(A) prohibits the Superior Court from appointing a fiduciary unless the person is registered with the Supreme Court and directs the Supreme Court to adopt rules to administer the program. The statute requires the rules include minimum qualifications, training, standards of conduct and disciplinary action for violations by fiduciaries.

The committee examined the public perception of the role of the Superior Court judge in appointing a fiduciary and other professionals. Some members expressed concerns that such appointments create the public impression the court is vouching for or endorsing the competency and ethics of the individuals. The statutory requirement for these professionals to subsequently file reports for court approval further implies court oversight of the case.

In and of itself, certification implies a higher level of professionalism. This public perception is further advanced by virtue of the fact certification of fiduciaries is granted by the Arizona Supreme Court.

The above factors may contribute to a false public impression an appointed fiduciary is qualified, competent and ethical and the court is providing an active and ongoing level of oversight in all cases. This can lull family members and other interested persons into a potentially dangerous state of acceptance of the procedures and practices of the fiduciary and court without question.

The committee considered the National Probate Court Standards which recommend the Probate Court appoint qualified fiduciaries and actively monitor guardianships and conservatorships, including the review and evaluation of reports filed with the court by fiduciaries. The committee noted that, in 1995, the Arizona Supreme Court adopted the National Probate Court Standards to govern probate cases in the Superior Court (Administrative Order 95-4). The majority of the committee members advocate that because the court is the last avenue of protection for vulnerable individuals, we must err on the side of caution and provide judicial oversight. A contrasting position is the administration of the fiduciary certification program by the judicial branch is an inherent conflict and an inappropriate role for the court with adequate protection of the public through the existing statutory bonding process and regulations.

Retaining the certification program, but moving it to the executive branch was discussed but rejected by the committee. The committee considered the original intent of the Legislature in directing the judicial branch to administer the program, the need to maintain high standards for the program and the enforcement of judicial orders.

Retention of the program will assist the Superior Court in meeting the following National Probate Court standard:

Standard 3.1.2 Fiduciaries

(a) The probate court should appoint as fiduciaries only those persons who are (1) competent to serve, (2) aware of and understand the duties of the office, and (3) capable of performing adequately. A fiduciary nominated by a decedent should be appointed by the court absent disqualifying circumstances.

Recommendation

The fiduciary certification program should be retained and remain under the administration of the Arizona Supreme Court, AOC.

The current administrative rules governing certification of fiduciaries establishes the following as qualifications for certification:

- Age 21 or older
- United States citizen
- Possess a high school or GED degree and one year of work experience specifically related to guardianship, conservatorship or decedent estates, or
- Possess a four-year college degree.

In addition, applicants must complete a criminal history background check, attend twelve hours of initial training and pass an examination administered by the program. The current design of the examination results in a pass rate exceeding 99 per cent. Certified fiduciaries are required to renew certification every two years and complete six hours of biennial continuing education. Currently there is no requirement, either at initial or renewal certification, for a credit check of the fiduciary's personal financial history. The committee suggests that if a credit check had been conducted when Nancy Elliston originally applied for certification, the court and the program would have taken appropriate action based on Ms. Elliston's questionable personal financial status. In discussing this issue, the committee received information on the credit checks conducted on applicants for admission to the State Bar of Arizona and reviewed the practices of other professions. These credit checks can be conducted electronically, at minimal cost. The committee recommends the initial and renewal application process be amended to require disclosure of information by applicants regarding their financial history and if they have been subject to a contempt of court order. The program coordinator could then conduct a credit check if any "red flag" indicators arose. In addition, credit checks could be conducted upon the request of a judge or as part of an investigation.

Feedback received from practicing fiduciaries, judges, court staff, attorneys and other stakeholders suggests the standards for certification should be increased through the initial qualifications, training and examination. Concerns were expressed that some individuals enter into this line of work without a clear understanding of the role and responsibilities of a fiduciary and have limited relevant experience, especially in the areas of good business practices, financial accounting and care management. Encouraging ongoing support and networking among fiduciaries would help to address this problem. Information from attorneys and other professionals, and experience gained through investigation into complaints against certified fiduciaries suggest "red flag" elements in many cases can be identified. The existence of one or more risk indicators does not necessarily imply there are problems in the fiduciary's management of the case, just that additional scrutiny may be advisable.

The committee recommends changes to the training requirements for renewal of certification. Currently, all required training is provided by the AOC. The committee recognizes continuing education programs conducted by other professional organizations can provide training on specific topics that benefit a professional level of practice. For example, sessions on financial management or bioethics may be beneficial, depending upon a fiduciary's current level of training and education and type of practice. Encouraging fiduciaries to seek out as many avenues of learning and training as possible will enhance professionalism and provide some flexibility in scheduling, especially for those fiduciaries residing outside of Maricopa County.

Recommendations

1. **Amend the application forms for initial and renewal certification to require applicants to disclose information regarding financial stability and if they have been subject to a contempt of court order. The program coordinator could conduct a credit check if the application contained any of the "red flag" indicators, including financial instability or contempt of court. In addition, the coordinator could conduct a credit check upon the request of a judicial officer or during an investigation into a complaint.**
2. **Review and modify the initial training program. Amend the administrative rules governing the program to raise the number of hours to 18 from the current 12 hours; develop and include a session on successful business practices, minimum policies and procedures for fiduciary offices and provide additional information on the role and responsibilities of fiduciaries. It is suggested the increased number of training hours would take effect with the initial training session planned for April 2002.**
3. **Rewrite the certification examination to better test for fiduciary knowledge. The standard for passing the examination should be raised to screen out those individuals who do not meet the minimum standards of the profession.**

4. **Amend the administrative rules to require one year of fiduciary experience for applicants with a four-year college degree and three years of fiduciary experience for applicants with a high school or GED education.**
5. **Increase the number of hours of continuing education required for renewal of certification from six to twenty hours.**
6. **Permit training provided by entities other than the AOC to qualify for some of the renewal training requirements. Some of the required credits would be met through the training session offered by the AOC with the remaining hours from other professional organizations such as the State Bar of Arizona, National Probate College, National Academy of Elder Law Attorneys, National Guardianship Association, Arizona Fiduciary Association, etc.**
7. **Encourage networking among fiduciaries.**

II. TRAINING

There are a number of unique aspects of the probate court. The lack of a true adversarial situation may leave vulnerable people unrepresented, monitoring of cases may span decades, there are a myriad of conflicts of interest that can arise, and an understanding of tax and financial information is vital to being able to assess the reasonableness of certain petitions. There is currently no program to provide specific training to judges and court staff when they assume a probate caseload. Judges reported to the committee they do not have a clear understanding of their role and responsibilities. Previous efforts to provide specialized training did not provide the information to the complete intended audience. For example, a session at a prior judicial conference, although well attended, was not attended by all judges assuming a probate caseload. Another program developed specifically for probate court judges was cancelled when it became evident attendance would be minimal.

Recommendations

1. **Require all judicial officers and court staff regularly assigned probate matters to attend specialized training on probate issues.**
2. **In cooperation with the Judicial College, provide a session on probate issues at New Judge Orientation, the June 2001 judicial conference and at subsequent judicial conferences.** [3]
3. **Encourage judicial officers handling probate cases to participate in county and state bar activities, sections and continuing education seminars relating to probate, mental health and elder law.**

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[3] One component of this recommendation is being implemented. A session on probate issues is being offered at the June 2001 judicial conference.

III. INFORMATION AND TECHNOLOGY

Currently, the data systems utilized throughout the Superior Court in Arizona provide limited information, are restricted in tracking capability and are not consistent from one county to the next regarding the type of information collected, or how it is coded. The Superior Court does not have the tools to easily identify all the cases assigned to each fiduciary or to monitor if the fiduciary is in compliance with filing of required reports. Automated databases can provide a means of oversight on fiduciary cases, allowing the court to monitor compliance by the fiduciary regarding filing of inventory and annual reports. It also gives the court the ability to collect and analyze caseload information. The inability of the court to maintain an accurate inventory of open and closed cases and to monitor these cases prevents the court from identifying risk factors and meeting case management needs.

An accurate database of probate cases and the technology to monitor and track those cases will assist the Superior Court in meeting the following National Probate Court Standards:

> **Standard 2.4.4 Collection of Caseload Information**
>
> *(a) The probate court should collect and review caseload statistics including the volume, nature, and disposition of proceedings.*
> *(b) The court should establish procedures to maintain the confidentiality of sensitive personal information or information required to be kept confidential as a matter of law.*

The Commission on Technology has recommended, and the Supreme Court has adopted, utilization of the FACTS case management software in the Superior Court throughout the state; [4] this has been installed and is currently operational in the thirteen rural counties. A specialized module for management of probate cases, PAM, has been developed and is currently being installed in the Superior Court in Pima County. PAM will provide the Probate Court with some of the tools the Court needs to perform its oversight responsibilities, including, for example, the identification of all cases assigned to a fiduciary. An analysis of the automation needs of the Superior Court in Maricopa County commissioned by the AOC in October of last year, determined that the FACTS software and PAM module, with some modifications, could meet the needs of the Probate Court.[5]

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[4] Arizona Supreme Court: Arizona Code of Judicial Administration, Part I, Judicial Branch Administration, Chapter 5: Automation, Section 1-501: Court Automation Standards.

[5] Arizona Supreme Court: Administrative Office of the Courts. Summary Report of the Operational Gap Analysis and Automation Expectations Study for the Maricopa Superior Court. 6 October 2000.

Recommendation

The Superior Court in each county should implement the FACTS software with the PAM module for management of probate cases. This system should include the ability to identify appointment of cases to fiduciaries and monitor critical reporting and court dates and should be modified, as necessary, to meet the needs of the Superior Court across the state.

IV. STANDARDIZATION

A major issue the committee considered is the lack of standardization in policies, procedures and practice in the Superior Court across the state. The inconsistencies exist from the beginning of a probate case to its conclusion, resulting in confusion for fiduciaries, attorneys, judges, court staff and the public and the potential for "large holes" in the oversight of cases. For example, there are significant differences in the content of the petition for appointment, review of accounting reports by a court accountant prior to judicial approval, attachment of documentation to the report, monitoring of the case by the court and action taken for noncompliance.

The State Bar of Arizona has published the revised Arizona Probate Code Practice Manual ("Manual") and the associated forms. The Manual provides standardized forms, with variance in some cases for filings in Maricopa County and Pima County. Standard utilization of the Manual and applicable forms by fiduciaries and family members would enable the court to better monitor cases. Consistent practice by judges in setting the due date for the accounting report, report for guardianship and the inventory and appraisal at the time of the initial appointment would further assist in effective oversight of cases.

Concerns have been expressed that some individuals are practicing without certification. In some cases, this involves individuals who served as a fiduciary prior to the certification program. The inability of the court to monitor its caseload has resulted in an overall failure to identify these individuals. The Superior Court in Pima County has addressed this issue by requiring all initial filings in Probate Court be accompanied by an affidavit of verification. This document not only identifies whether a fiduciary is certified but also provides the Court with the relationship of the petitioner to the potential ward or client; therefore including cases where the petitioner is a family member.

Recommendations

1. **The Supreme Court should require the statewide utilization of the Arizona Probate Code Practice Manual and its accompanying forms.**
2. **The Supreme Court should require the use of the Pima County Affidavit of Verification Form, as contained in the Arizona Probate Code Practice Manual, to accompany every initial filing of all petitions in the Probate Court statewide.**

3. **Judges should set the reporting dates for the inventory, first annual accounting and annual guardian report and estate management plan, if applicable, in the minute entry appointing the fiduciary to a case. Subsequent due dates should be set by minute entry on an annual and/or anniversary date. This provision should apply to both temporary and permanent appointments.**

V. COURT-APPOINTED COUNSEL

Arizona Revised Statutes § 14-5303(C) requires the Superior Court to appoint counsel, if an alleged incapacitated person is not otherwise represented by independent counsel, to represent the person at a court hearing for appointment of a guardian or conservator. The county assumes the associated cost in cases where there are insufficient funds in the person's estate. There are no uniform statewide guidelines regarding the selection, role and responsibilities of court-appointed counsel, resulting in significant differences in practice across the state.

Rule 3.1.3 of the National Probate Standards specifies the court has an obligation to ensure a court-appointed attorney has the necessary skills to perform the duties of the appointment. However, in Arizona, the selection of court-appointed counsel is often based on the availability of an attorney who will provide the service at no cost. Furthermore, there are no accepted guidelines regarding the necessary qualifications of counsel for a judge to utilize when making the appointment, nor are there specific training programs to prepare attorneys for assumption of these responsibilities.

There is also discrepancy and disagreement regarding retention of counsel after the initial appointment. In some cases, counsel is retained to assist in the oversight of the case with the expectation counsel will review the inventory, accountings and other reports filed by the appointed fiduciary. A 1975 decision by the Court of Appeals (*Matter of Ray's Estate* 25 Ariz. App. 40, 540 P.2d 771, supplemented 114 Ariz. 348, 560 P.2d 1255) found retaining court-appointed counsel in cases where there are no unresolved issues results in unnecessary expense to the estate. The prevailing view among attorneys appears to be their role is to protect the interests of the ward through the appointment process; that counsel is neither qualified, prepared, nor adequately compensated to provide further oversight by reviewing the inventory, accountings and other reports. Although retention of counsel past the initial appointment would provide additional oversight, it would result in additional costs to the counties and may also increase malpractice costs, with the increased costs being passed on to the estate.

Recommendations

1. **The Superior Court should develop a training program for court-appointed counsel. Inclusion of court-appointed investigators in this training would also be beneficial.**
2. **Further discussion of this issue is warranted and should include examination of the merit of developing and adopting statewide guidelines for the appointment, qualifications and responsibilities of court-appointed counsel.**

VI. AUDITS

An identified weakness in the current system is the lack of auditing controls to verify the accuracy and timeliness of information submitted by the fiduciary. Although some counties utilize a court accountant to review accountings filed by the fiduciary prior to approval by the judge, this is a review only and not an independent audit. Another identified problem is that fiduciaries are not always required to submit supporting documentation with the accountings.

The committee has considered a number of options, including random audits by AOC or Superior Court staff and audits based upon the identification of "red flags" in a case. The committee also discussed requiring fiduciaries, when filing an accounting with the court, submit proof the accounting has been reviewed by a certified public accountant. Another option is to require fiduciaries hire a certified public accountant to conduct an audit of the fiduciary's accountings and business practices and to provide proof of this review with the application for renewal of certification. Funding for audits could be generated through certification fees, however, it is recognized this increased cost would most likely be charged to the ward's estate. Ultimately, the committee agreed that implementation of an auditing procedure on a statewide basis would best and most consistently be implemented through the AOC hiring one auditor who would travel around the state and conduct audits on conservatorship cases identified by the presiding probate judge in each county. Audits of a limited sample of the conservatorship cases handled by a fiduciary could be conducted within a relatively short period of time and would provide an acceptable confidence level of reliability. If the audit revealed any of the "red flag" indicators, the auditor could then conduct further review. The committee developed audit checklists for use by the auditor and AOC staff tested these checklists by utilizing them in a review of a selected private fiduciary's cases. Funding for implementation of this recommendation would require legislative action, either through a state appropriation, increase in the current surcharge, new surcharges, or a combination of funding. For example, increasing the existing $1.00 surcharge on birth certificates by 50 cents would provide approximately $80,000 in additional funds.

The committee considered the appropriate and best use of volunteers in the audit function and recommends volunteers can assist in the oversight effort by monitoring timely compliance with report filings.

Recommendations

1. **The presiding probate judge in each county should implement a procedure for random audits of conservatorship cases. The AOC would provide the personnel and funding to conduct the audits on the identified cases.**
2. **The Superior Court should explore programs which could be developed to utilize volunteers to monitor timely compliance with filing of required reports.**

VII. STATUTORY AMENDMENTS

The committee has identified a number of statutes that are problematic with regard to recovery of bonds, actions for breach of fiduciary duties, enforcement of court orders and sharing of information among government agencies.

Under current law, a fiduciary is required to post a bond to protect the assets in the estate. In some cases, bonding companies refuse to pay for losses incurred by the estate until all adjudication concerning the case is completed. Although all the assets in an estate may eventually be recovered through the bond, a long delay in this process can result in a significant reduction in the lifestyle of the ward. Arizona Revised Statutes § 46-456(C) provides persons who fail to meet their statutory fiduciary duty to an incapacitated or vulnerable adult may be liable for treble damages. There is currently disagreement between bonding companies and attorneys as to whether the surety bond is responsible for these treble damages. Bonding companies argue treble damages are not part of the original contract between the company and the fiduciary and subsequently holding the bond responsible for these damages is a punitive measure. Recovery of the attorney fees involved in the bond action can also be problematic. Some bonding companies refuse to reimburse for attorney fees on the basis the statutes do not currently specify attorney fees may be recovered. In these cases, it has been necessary for the attorney to initiate litigation to recover the fees. Further examination of existing law regarding the court's ability to order treble damages in financial exploitation cases is also warranted.

The committee reviewed the current difficulties encountered in prosecuting individuals who have abused incapacitated and protected persons. One option considered was to pursue statutory amendments for a separate statute establishing breach of fiduciary duty as a criminal offense. Other states have such statutory provisions to assist prosecutors and courts in enforcement of the adult abuse laws. However, discussions with representatives from the Maricopa County Attorney's Office and the Office of the Attorney General revealed adoption of such statutory amendments may be problematic and actually make it more difficult to prove an abuse case. Although Maryland has a separate breach of fiduciary statute, prosecutors from that state reported they do not use this statute in abuse cases. As an alternative, the committee recommends enhancing the sentencing structure in the criminal code to provide for enhanced sentences when a crime is committed against an incapacitated or vulnerable person.

Arizona Superior Court judges told the committee of problems in enforcing court orders against fiduciaries. For example, in one case, a judge has issued six bench warrants for a fiduciary; all remain outstanding. Under current law, these orders are civil, not criminal bench warrants, not entered into the statewide or national criminal history data banks and, as such, have limited enforcement capabilities. Committee members discussed this issue with representatives from the Arizona Sheriffs' Association. The committee recommends statutory amendments be pursued to provide for criminal arrest warrants in probate matters, similar to those enacted by the Legislature in recent years for child support cases.

In conducting investigations of civil and criminal complaints against fiduciaries, problems have been encountered regarding the authority of government agencies to appropriately share information. Current law prohibits some government agencies from communicating with other agencies regarding a pending investigation, even if both agencies are examining the activities of the same fiduciary. For example, in the case of the complaint against the Gila County Public Fiduciary, even though the Auditor General was conducting its investigation at the same time the AOC was pursuing the complaint against Ms. Reill-Corbin, the Auditor General was not able to share information with the AOC until its report was released to the public. The adopted administrative rule governing the fiduciary certification program authorizes the AOC to share information on a pending investigation with the Office of the Attorney General and other regulatory agencies, but does not allow this disclosure to county attorneys. The committee recommends amendments to the administrative rules and statutes to provide for appropriate disclosure among government agencies. Amendments to Arizona Revised Statutes § 14-5651 regarding the use of the term "private fiduciary" would help clarify the certification requirements. As currently written, the use of "private fiduciary" gives the false impression certification does not apply to public and corporate fiduciaries. The committee recommends the statute be amended to use the term "professional certified fiduciary." Further amendments to this statute should be made to increase the minimum age for certification to age twenty-one.

Recommendations

1. **Review the statutes regarding the bonding process, surcharge actions, payment of attorney's fees, and treble damages.**
2. **Amend administrative rules and recommend to the Legislature amendments to applicable statutes to permit appropriate disclosure among government agencies of confidential information pertaining to investigations and other enforcement actions.**
3. **Recommend the Legislature adopt statutory amendments to authorize the court to issue criminal bench warrants for enforcement of court orders in probate matters and to specify that these warrants be entered into the statewide and national criminal history data banks.**
4. **Recommend to the Legislature the sentencing structure in the Arizona criminal code be amended to provide for enhanced sentences when a crime is committed against an incapacitated or vulnerable person.**
5. **Recommend amendments to statute to change reference to "private fiduciary" to "professional certified fiduciary."**
6. **Recommend amendments to increase the statutory requirement for certification from the current level of an adult citizen to that of a citizen who is at least twenty-one years of age.**

VIII. STATEWIDE FIDUCIARY OFFICE

Under current law, each county is required to have a public fiduciary office. The office primarily handles those cases where no one else is willing and able to serve the needs of incapacitated or protected persons. Funding is provided by the county board of supervisors. There are significant differences among the fifteen public fiduciary offices with respect to administration of cases and levels of funding.

An alternative is a statewide public fiduciary office. This office would administer all cases now handled by county public fiduciaries and private, non corporate fiduciaries. Proponents maintain a statewide office would address the current problems the counties face in providing adequate funding for the public fiduciary office, provide for standardization in case management and administration, greater oversight and a higher level of professional service. Opponents argue a statewide office is no better equipped to administer the various matters currently managed by a private or public fiduciary. No evidence exists signifying the public sector is more honest than the private sector and the increase in bureaucracy would most likely result in less individual care of the wards and protected persons. A statewide office can also suffer from a lack of leadership and funding.

Recommendation

The concept of a statewide fiduciary office should not be pursued.

IX. COMMISSION ON PROFESSIONAL FIDUCIARIES

The efforts of the Fiduciary Advisory Committee over the past months highlight the many and complex issues involved in the probate area. If adopted, the committee's recommendations will result in significant changes to the system. Establishment of a standing commission would assist the Arizona Judicial Council and the Supreme Court in implementing these changes, evaluating the impact and recommending any further changes deemed necessary.

Recommendation

The Chief Justice establish a standing commission of the Arizona Judicial Council to serve in an advisory capacity on fiduciary matters to the Council and the Supreme Court. The Commission shall make recommendations to the Council and the Court to improve the quality, consistency and coordination of fiduciary and court procedures statewide to help ensure the ethics and standards of professional fiduciaries. It is recommended the Commission consist of seven members, with representation from public and private fiduciaries, the legal profession and the Superior Court.

Minority Report re: FIDUCIARY ADVISORY COMMITTEE

Introduction:

The Chair has submitted the majority report and the undersigned submits this minority report. The undersigned disagrees with several aspects and recommendations of the majority report. These were clarified to the committee in the August 30, 2000 letter to the committee members.

I recognize I speak as a minority of one person. The majority is proposing an extensive revision of the Arizona law dealing with decedents estates and conservatorships. Further, several of the proposed changes would apparently be in the form of court rules that would contradict applicable statutes. I believe it is appropriate to make it clear the majority views are not unanimous and reasonable differences exist both as to what the actual problem is and how to remedy the problem.

Weaknesses in the Premises of the Majority Report:

The majority report is premised to a great extent on information and conclusions contained in the "Report to the Arizona Judicial Council on the Fiduciary Environment in the State of Arizona" prepared by Mr. Sittenfeld dated June 5, 2000. The undersigned believes some of the information set forth in the report was not gathered or presented in a manner that creates confidence in its accuracy as a representation of the opinions of judges, attorneys, fiduciaries, and citizens involved in the probate system. As a result it is my belief that certain information and the conclusions derived from that information are flawed or questionable and, in turn, the majority report contains questionable conclusions and recommendations. If the premises are flawed then the conclusions based on those premises are questionable also.

For example, the information or premises upon which conclusions are based are questionable:

A) Conclusions that the public believes the court vouches for or endorses an individual when the court appoints that individual as personal representative or conservator are not supported by public survey or public hearings.

B) Conclusions that the public believes the court reviews or audits accountings and competent beneficiaries need not exercise their rights or take measures to protect their interests are not substantiated.

C) An underlying, but unspoken, assumption of Mr. Sittenfeld's report and the majority report is that additional court involvement will result in less fraud and greater protection of the public. And that such a system is the most cost effective method to achieve the desired results. It is a conclusion not based on study or supported by appended information. Alternatives are not explored.

D) No comparison is offered between rates of fiduciary fraud under the prior Arizona probate code (which was similar to the system proposed by the majority report) versus the new probate code

enacted in 1973.

E) No comparison of fraud rates by private versus family fiduciaries is provided. Indeed no information is offered as to the number and size of estates handled by the less than 300 certified private fiduciaries and the various public fiduciaries as opposed to the number and size handled by family fiduciaries.

F) No comparison of fiduciary fraud rates before and after the statutory creation of the private fiduciary role is offered. Rather, a summary of fraud is offered in Appendix A by classification of the type of fiduciary (private, attorney, public fiduciary).

G) The appended information fails to distinguish between probate estates and conservatorship estates and to specify the size of the estates involved.

H) The report also fails to establish the actual loss suffered by interested persons after recovery on bonds and other forms of insurance. The danger to society should be measured in net terms not gross.

On the other hand, certification of a private fiduciary by the Arizona Supreme Court is a clear representation to the public that the Arizona Supreme Court has found this individual to be both competent and honest. The undersigned believes the real problem is that the public has been told they can rely on the Supreme Court's certification of private fiduciaries, but we have found it is not always reliable so the majority report proposes the creation of an expensive and invasive court system to compensate for the erroneous representation as to private fiduciaries.

The situation as to public fiduciaries is quite different. Public fiduciaries are employed by and are an agency of their respective counties. The obligation to audit and regulate public fiduciaries should fall on the respective counties not the court. Similarly the obligation to employ competent individuals as public fiduciary for a county falls on the county board of supervisors not the court.

Several significant inadequacies are present in the majority report:

1) The majority report frequently blends the concepts of probate of a decedent's estate with the issues involved in conservatorships. Both decedents' estates and conservatorships are included within the probate court and the statutes for both are in the same Title 14. There is a tendency to not distinguish between the two and to lump them together as "probate cases." However, a fundamental difference exists between the administration of a decedent's estate and a conservatorship estate. In a decedent's estate there are designated beneficiaries who, as competent individuals, are able to and should protect their interests without court involvement. In a conservatorship the protected person is not capable of protecting his or her interests.

2) The conclusion that a costly and invasive system should be applied to all cases involving a court appointed fiduciary is not supported by included information. No information is provided to demonstrate the extent of problems with family fiduciaries. The majority concludes the entire system

must be changed to deal with a problem defined in terms of private and public fiduciaries and attorneys (See Sittenfeld Report Appendix A). No information is provided as to what percentage of decedents estates and conservatorships have private fiduciaries and what percentage have family fiduciaries. The final majority report, pages 9 and 10, does narrow its views to guardianships and conservatorships and seems to exclude decedents' estates; however, this was a change not made until after several drafts of the report.

3) The underlying belief that competent individuals are incapable of protecting their respective interests and both need and want an expensive and invasive court system to do the job for them is a conclusion not based on public hearings or other information. The conclusion that court appointed guardians ad litem cannot protect incapacitated individuals and review accountings as well as court staff can is not reasonable.

4) The majority report fails to consider the costs of its proposals. There is no estimate of the total cost of such a system nor a proposal as to an appropriate method of allocation of such costs to individual probate or conservatorship estates.

Arizona's System:

The Arizona version of the Uniform Probate Code was the 1973 legislative solution to a general public resentment of the old probate system for administration of decedents estates. The old system was expensive, lengthy, and invasive of family privacy. The majority report would create an even more expensive and invasive system without substantiation that fraud would be reduced or that the public wants the change. Many may recall the public cry for a more efficient and less costly and more private system for handling decedent's estates. The public cry was focused by Mr. Dacey's best selling book How to Avoid Probate. The majority proposes a return to a rejected system.

The majority report refers to and relies on the National Probate Court Standards; little focus is presented to Arizona's statutes. Some conflict exists between those two standards. The Arizona legislature has established Arizona law. It is inappropriate to circumvent the applicable statutes by court rule.

Focus of the Majority Report:

The Committee's focus has understandably been on avoidance of fraud by court appointed fiduciaries, especially the private fiduciaries certified by the Arizona Supreme Court.
The concerns are:

1) the public attaches significance to the appointment of a fiduciary by the court and believes the appointment process includes a finding by the court that the fiduciary is qualified and honest,

2) the public believes the court will monitor and verify the accountings and actions of the fiduciary and relies on the court to do so, and

3) certification of private fiduciaries by the Arizona Supreme Court is a representation to the public that private fiduciaries are competent and honest and additional regulation of private fiduciaries is required.

I. Fiduciary Certification Program

Certification of private fiduciaries by the Arizona Supreme Court is a representation to the public by the Arizona Supreme Court that private fiduciaries are competent and honest.

The majority recommends retention of the certification, regulation and discipline of private fiduciaries within the judicial branch of government. Given the problems outlined in Mr. Sittenfeld's Report (Appendix A) it is probably not realistic to expect another branch of government would willingly accept the job. I believe certification by the Supreme Court creates the problem that gave rise to the majority report.

I certainly favor increased requirements for certification, both initially and continuing. It should not proceed by inches and half steps but rather by a determination of what is required to certify a group that really is competent and honest. The process should be as complete as possible to obtain and maintain public confidence in public/private fiduciaries and the Supreme Court. The cost should be paid by those who use public and private fiduciaries.

Is it reasonable to expect that adding six hours to the required education will prevent fiduciary fraud? A comparison with the requirements to practice law (also supervised by the Arizona Supreme Court) is helpful. To practice law a person must a) have a law degree from an accredited law school, b) pass a two day written examination, and c) be of good moral character. Consider that the efforts of the Arizona Bar Association consists largely of discipline of attorneys. Is it reasonable to expect the modest additional requirements proposed by the majority report will resolve the fiduciary fraud problem?

II. Training of judges and staff

I favor additional training and education. If funds are not available unless the training is mandatory then it should be mandatory.

III. Information and Technology

The database, case management and calendering concerns will be met with the implementation of the FACTS computer systems currently in the development stage by AOC. The FACTS/PAM system for probate is being developed on a pilot program basis in Pima County and may go active in mid-2001. Other counties will be able to use this system when it is operational.

IV. Standardization

I join in the recommendations as made. However, as we have not seen the proposed forms I raise the following:

Some standardization of accounting forms or formats may be useful. Many fiduciaries (public fiduciaries, banks, law firms, and private fiduciaries) utilize computer accounting systems of varying degrees of sophistication and complexity. If local or uniform rules are modified I recommend that those rules be flexible enough to permit each county to permit filing accountings on various formats at the discretion of the court. Lay fiduciaries must be able to comply with the rules. Perhaps a paramount consideration is that lay family members and other interested persons must be able to understand the accountings.

Further, I recommend that we not attempt to create one accounting format for all possible situations. A conservatorship accounting for a fifteen year old minor regarding an estate of $15,000 held in a CD for three years is quite different than a conservatorship for a two year old minor with an estate of $1,500,000 invested in equities, bonds and real estate.

The rules must be flexible enough to permit an appropriate accounting that will be neither an undue financial burden on the estate nor insufficient to permit and require appropriate full disclosure. The rules should not be a weapon to permit less than full disclosure. I don't think any judge would want a fiduciary to respond to an objection with the defense that the fiduciary had complied with the rule and no further inquiry is permitted nor disclosure required under that rule.

V. Court Appointed Counsel

The current probate statutes for both decedents estates and conservatorship estates authorize and anticipate the court appointment of a guardian ad litem (usually an attorney) to represent a person not otherwise capable of protecting his/her interests. The cost of such representation should be paid by the person whose interests are being protected. It is my belief that this is the most economical way to protect an individual and the fairest way to allocate the costs.

The court currently has discretion to continue the appointment of an attorney when there are unresolved issues. The statements as to "the prevailing view among attorneys" are not substantiated. Clearly the attorney must be compensated for the work. The judge must determine the reasonableness of the fees which will differ from case to case. The cost would not fall on the counties but rather on the estate in question. There will not be a conservatorship or decedent estate unless there are assets. The statement that such practice would increase malpractice costs is unsubstantiated and illogical.

Pima County has utilized the concepts of Rule 3.1.3, if not in name at least in substance, for many years. A list of court approved attorneys available for appointment is maintained by the court and initial and periodic training is offered by the court. Training for court appointed attorneys can be

made available through the State Bar working with the probate judges.

VI. Audits

The majority has two general concerns that give rise to this proposal:

A) The public attaches significance to the appointment of a fiduciary by the court and believes the appointment process includes a finding by the court that the fiduciary is qualified and honest, and

B) The public believes the court will monitor and verify the accountings and actions of the fiduciary.

A) Significance of court appointment of a fiduciary:

This conclusion is not supported and is not reasonable given the actual appointment process. Although the majority report recommendation is confined to conservatorships this was a major area of disagreement in discussions. The original position was that audit and review should apply to both decedents estates and conservatorships. I have a concern that issue will reappear.

1. Decedents Estates:

The realities of the appointment process in decedents' estates are different from that in conservatorships. In a decedent's estate the court appoints the individual appointed or nominated by the decedent in a Will, or if there is no Will then the person nominated by the heirs. The decedent determines who he or she wants to administer his/her estate assets, not the court. If there is no Will then the heirs who will receive the property nominate the person they want to administer the estate. The court appoints or activates the decedent's or heirs' decision. The court does not exercise its judgement as to the wisdom of the decedent's or heirs' decision as to who shall administer the estate any more than it does as to the wisdom of the decedent's decision as to whom the assets are devised. In a few situations "the public" may feel there is more to such a court appointment but no public outcry has appeared to validate a change that would negate a decedent's or heirs' right to appoint whomever he or she wanted as personal representative. Inherent in the Committee's report is the requirement that the system must be changed to allow the court to exercise its judgement as to who should act as personal representative and the court must investigate the testator's or heirs' wisdom in nominating an individual and override the decedent's and heirs' right to appoint whomever he or she wanted to act as personal representative. Imagine the public outrage when a probate judge determines that he/she will not appoint the person the decedent or heirs nominated. What criterion will be used to make that determination? The court should not take lightly the removal of such a right.

If the court acquiesces in the testator's choice or the choice of the heirs do we still believe the court exercises its independent judgment as to the qualifications of the personal representative? Such a

conclusion would not be reasonable. Neither is reasonable to require the court to make investigation as to the wisdom of the testator's or heirs' nomination.

2. Conservatorships:

In conservatorships the court appoints the conservator nominated by the protected person or if there is no nomination then according to the statutory priorities. The current Arizona law clarifies the personal right to nominate a conservator of the person's choice. The court has discretion over such appointments but the current statutes are clearly adequate to cover the situation. Again, the court must act carefully in overriding the protected person's or family's nomination. The right to nominate one's conservator or guardian is a very personal and important right we should not lightly deny the public. A general concern that "the public" might attach unwarranted significance to a court appointment seems a marginal, at best, reason to deny such a right to individuals.

In response to the public demand for a less expensive and intrusive system to deal with incapacity and the management of a person's assets at such time the Arizona legislature enacted the Uniform Durable Power of Attorney Act in 1973. That act gave each individual the right to name as attorney in fact such person as they may choose to handle their financial matters.

B. The public believes the court will monitor and verify the accountings and actions of the fiduciary.

1. Decedents' Estates:

ARS §14-3704 succinctly states Arizona's statutory concept (as carried over from the Uniform Probate Code) regarding the role of the court in a decedent's estate:

> A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified or ordered in regard to a supervised personal representative, do so without adjudication, order or direction of the court, but he may invoke the jurisdiction of the court, in proceedings authorized by this title, to resolve questions concerning the estate or its administration.

This statutory scheme includes the concepts of "formal proceedings" and "informal proceedings" as defined in ARS §14-1201 and the statutory concept (as contained in the Uniform Probate Code) of probate as a series of steps each of which may be handled as a formal or informal proceeding. This should be contrasted with the concept of supervised administration which is an exception to the usual process.

The public reaction to the old probate system with heavy involvement of the court should not be hastily overlooked in a desire to protect the public. The public was "protected" under the old system

and did not like it. The public reaction involved not only a rejection of the old probate statutes and enactment of the less intrusive and less expensive uniform probate system but the expanded use of alternatives to probate: the living trust, joint tenancy, POD accounts, and contractual designations in life insurance and retirement plans. As the cost of probate rises with a more complex and intrusive system, the public reacts by finding alternatives. Along with the above alternatives the probate code has all but eliminated probate of small estates by the use of affidavit process to transfer ownership of both personal and real estate. The reactionary system offered by the majority report would be a large step back into the early half of the last century.

Indeed, the concern that estate beneficiaries can not protect themselves is substantially negated by the fact that "small" decedents' estates are not involved in the court system. The assets subject to probate must be over $50,000 to require a probate; otherwise they may be distributed by affidavit. Therefore, beneficiaries of estates within the court system have assets available to employ advisors on their behalf.

2. Conservatorships:

Conservatorships offer different problems than decedents' estates do. The court has more involvement under the current conservatorship statutes than it does in a decedents' estate. The issue is how best to protect the assets of a protected person who is not competent to do so. The majority report offers a system of court review and auditing of inventories and annual accountings. The alternative is to use the current statutory arrangement.

Conservatorships do require the filing of an inventory and annual accountings. Notice for conservatorship accountings (ARS §14-5419) is required to a guardian, a spouse, a parent, or a child who is not the conservator. If the court determines that representation of the protected person's interest would otherwise be inadequate (see ARS §14-1403) the court should appoint a guardian ad litem to represent the interests of the protected person. The statute does not direct the court to undertake a review of the accounting. The expense of the guardian ad litem is an expense to the conservatorship estate, not the general public. Of course the conservator may be surcharged for that expense if appropriate. The court has other alternatives available, including continued use of the court appointed attorney, appointment of an investigator, and/or required notice to individuals who have common financial interests with the protected person.

This raises yet another issue the majority report does not deal with. The court's approval of an accounting is a settlement of all aspects of that accounting, not just the accounting aspect. The reviewer must consider not only the assets, income and expenses, and market values but must also consider the appropriateness of the investments - are the investments prudent? The issue of whether the fiduciary has complied with applicable standards of investment must be considered. I do not believe the court or court staff are in a position to independently review those investments. Yet the public, to the extent it believes the court reviews the accountings, may believe the court reviews the appropriateness of the investments as well.

The public has reacted to the cost of conservatorships also. The rise of the durable power of attorney and living trust have avoided the need for conservatorships for many people. As the cost of court systems increases the public will seek alternatives that are less expensive and less intrusive. That is just a fact.

VII. Compensation

The Arizona version of the Uniform Probate Code provides for a "reasonable" fee as opposed to the prior code that set a straight percentage fee. The public believed the percentage fee was too high. Court review of challenged fees and the facts of the case provide protection for the public and the fiduciary and attorney.

If the public, as determined by the legislature, wants a straight percentage fee for public and private fiduciaries that is satisfactory. However, family members should be allowed and required to charge a reasonable fee.

VIII. Statutory Amendments

I agree with recommendations 1, 2, 3, 4 and 5. A committee including representatives of the Attorney General Office and each of the county attorneys should make recommendations to the legislature to permit and insure vigorous and complete prosecution of fiduciary fraud, abuse and exploitation.

I disagree with recommendation 6. It appears private fiduciaries are advertising to the public that they are certified by the Arizona Supreme Court and that carries with it the imprimatur of that entire branch of government. To now expand the name to professional certified fiduciary seems to expand the representation by the Court.

IX. Generally: Adversarial System or Inquisitional System

The interested persons, not the court, have the burden and obligation to review the accountings and raise objections by filing an appropriate pleading with the court. If objections are not raised the accounting will be approved. If objections are raised there will be a hearing in which evidence is presented and the court will resolve the dispute by an order which may be appealed.

If the court undertakes to review an accounting but fails to find an existing problem, the interested person can not recover for the court's error. If, however, a guardian ad litem or attorney fails to find the problem the beneficiary may be able to recover against that guardian ad litem or attorney. An attempt by the court to represent the beneficiary may harm the beneficiary twofold: first by not finding the problem and second by eliminating a remedy the beneficiary may otherwise have against

his/her guardian ad litem or attorney.

The Sittenfeld Report, page 5, notes our legal system is adversarial in nature and that creates a system of checks and balances. It further notes that "... Probate often is not adversarial ..." The majority seeks to place the court as an advocate for the beneficiary or protected person and thereby creates an inquisitional system. This minority report seeks to retain an adversarial system through the court appointment of a guardian ad litem or additional notice requirements when appropriate. The adversarial system retains the court as an independent tribunal rather than as an advocate pitted against the fiduciary.

Recommendations:
In summary, I recommend:

- Removal of the private fiduciary certification and regulation from the Arizona Supreme Court to such other branch of government as may accept it. Perhaps the Secretary of State or Executive branch. This would require a change in the law by the legislature.

- If we undertake to recommend changes in the Uniform Rules or local rules as to accounting forms and format, I recommend only broad Uniform Rules regarding forms and formats and requirements of conservatorship accountings. I believe there should be substantial latitude for local rules and, apart from any rules, broad court discretion on a case by case basis. Judges are directed to use good judgment.

- Consideration of statutory changes to permit challenges to conservators' actions in spite of court approval of interim accountings. This might be accomplished by defining exactly what is being approved in an interim accounting and is *res judicata.*

- In decedent's estates a court rule requiring written notification to the heirs and devisees of their right to an inventory and accounting, their obligation to review the accounting, and their ability to challenge those by filing a pleading with the court. Further, the notice could clarify that the court will not undertake an independent review of the accounting and will approve the accounting unless objections are filed.

- In conservatorships: Upon the filing of a petition to approve an accounting, the judge should make a threshold determination as to whether all interested persons are adequately represented. If the answer is in the affirmative the court should set a hearing date on the petition to approve the accounting. If the answer is in the negative then, in addition to setting a hearing date, the court should utilize its authority to a) continue the court appointed attorney, b) appoint an investigator or guardian ad litem, or c) require notice to additional individuals. When the court has concerns as to whether a protected person or his/her estate is being handled properly the court has a number of specific alternatives to assure the conservator's actions are reviewed. The expenses would be a direct expense to the

conservatorship estate.

- A committee from the Attorney General Office and each of the County Attorneys should make recommendations to the legislature to permit and insure vigorous and complete prosecution of fiduciary fraud, abuse and exploitation.

- If changes in the probate code are proposed, members of the public who want a less expensive and less invasive administration of their assets should be allowed that option. The public should be provided two options; a) to use a public or private fiduciary with court supervision of the public or private fiduciary as proposed by the majority report, or b) to use a family member with the less intrusive and less expensive current statutes and without court sua sponte supervision of the fiduciary.

  This would not be a difficult change in the probate code. The probate statutes currently provide for supervised administration of decedent's estates as an alternative to the more frequently used formal and informal proceedings. Supervised administration is provided for in ARS §14-3501 et. seq. Pursuant to ARS §14-3505 annual accountings and formal final accountings are required. Further subsection B provides:

  > "In connection with any account, the court may require the personal representative to submit to physical check of the estate in his control, to be made in any manner the court may specify."

It would not be difficult to modify the code to require that any decedent's estate in which a private or public fiduciary is appointed as personal representative shall be a supervised administration. There would, of course, be substantially higher fees paid by the estate to both the court and to the personal representative under supervised administration.

The alternative of supervised administration has been infrequently used. In Pima County there have been less than ten supervised administrations since the probate code was changed in 1973. There has not been a public demand for the supervised administration of decedent estates proposed by the majority report. The infrequency of the use of supervised administration is some indication of lack of public dissatisfaction with the administration of decedents estates under the flexible and less expensive Uniform Probate Code concepts.

The conservatorship statutes can be similarly modified when a private or public fiduciary is appointed. The more flexible current system can be used when a family member is appointed unless there is an objection by an interested person.

- If the majority report is correct and the public does expect the court will appoint only qualified individuals as fiduciaries then it follows the code should be amended to provide:

  a. Specific guidelines for the court in evaluating the qualifications of a nominated private

fiduciary when making the appointment of a personal representative, guardian or conservator.

b. Clarification that individual nomination of a specific private fiduciary is not a right but may be disregarded by the court in favor of another private fiduciary or the public fiduciary if the court finds it appropriate.

c. Clarification that certification as a public or private fiduciary and nomination by an individual testator or protected person does not entitle the nominated private/public fiduciary to automatic court appointment and is not automatic qualification and the court will make further investigation pursuant to the above guidelines. Clearly, certification does not equate to qualification. If certification were the final word and could be relied upon then the more comprehensive court review system proposed by the majority report would not be necessary.

d. Clarification that nomination of a family member is a right and will be honored by the court regardless of the person's qualifications unless challenged by an objection to the appointment by an interested person pursuant to the current statutes.

Thank your for your consideration.

Respectfully,

Clark W. Munger
Judge Superior Court